SUPREME COURT OF THE UNITED STATES.

No. 323.

GILBERT WOODRUFF, PLAINTIFF IN ERROR,

vs.

JOSIAH M. MANN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States of America for the eighth circuit and northern district of Illinois, before the judges thereof at the city of Chicago, in the district aforesaid, on Wednesday, the twenty-second day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-eighth year.

WILLIAM H. BRADLEY, *Clerk.*

JOSIAH M. MANN
vs.
GILBERT WOODRUFF, impl'd with ROBERT WEST AND ISAAC MUNSON.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on the twenty-ninth day of September, in the year of our Lord one thousand eight hundred and sixty-two,
2 came said plaintiff, by his attorneys, and filed in the office of the clerk of the circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, his præcipe praying the issue of a writ of summons against said defendant in a plea of trespass in the case upon promises, damages seven thousand dollars, returnable on the first Monday of October, in the October adjourned term of said court, A. D. 1862, and also at the same time filed his bond for costs in said entitled cause, which said bond for costs is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, October term, A. D. 1862.

JOSIAH M. MANN
vs.
GILBERT WOODRUFF, ROBERT WEST, AND ISAAC MUNSON. } In ———.

I hereby enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of pay-
3 ment by the plaintiff of any costs ordered or adjudged to be paid by him, *and* I do hereby agree and stipulate that execution may issue against my property for any costs taxed against said plaintiff.

Dated this 29th day of September, A. D. 1862.

ELIJAH M. HAINES.

Indorsed: Filed Sept. 29th, A. D. 1862.

WM. H. BRADLEY, *Clerk.*

On the same day, to wit, the twenty-ninth day of September, A. D. 1862, a writ of summons was issued out of said clerk's office against said defendants in said plea, which said writ, together with the return of the marshal indorsed thereon, is in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you that you summon Gilbert Woodruff, Robert West, and Isaac Munson, if they shall be found in your district, to be and appear before our judges of our circuit court of the United
4 States for the northern district of Illinois, at the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of October next, to answer unto Josiah M. Mann in a plea of trespass on the case upon promises, to his damage, as he alleges, of seven thousand dollars. And have you then and there this writ.

[SEAL.] Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States of America, at Chicago, aforesaid, this twenty-ninth day of September, in the year of our Lord one thousand eight hundred and sixty-two, and of our independence the 87th year.

WM. H. BRADLEY, *Clerk.*

Executed the within writ by reading to and in the hearing of the within-named Gilbert Woodruff, this 30th day of September, A. D. 1862.

Robert West, Isaac Munson not found in my district.

J. R. JONES,
U. S. Marshal N. District Ill's,
By P. MUNSON,
Deputy.

5 Indorsed: Filed Oct. 1st, A. D. 1862.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the fourth day of October, A. D. 1862, came said plaintiff, by his attorneys, and filed in said clerk's office his declaration against said defendants, which said declaration is in the words and figures following, to wit:

UNITED STATES OF AMERICA:

Circuit court of the United States for the seventh circuit and northern district of Illinois, of the October term, A. D. 1862.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Josiah M. Mann, plaintiff in this suit, who is a citizen of the State of Michigan, by Haines & Story, his attorneys, complains of Gilbert Woodruff, who is a citizen of the State of Illinois, Robert West and

Isaac Munson, who are citizens of the State of Iowa, defendants, who have been duly summoned, etc., of a plea of trespass on the case upon promises.

For that, whereas the said defendants, on the 15th day of October, in the year of our Lord one thousand eight hundred
6 and fifty-seven, being copartners doing business under the name, style, and firm of West, Woodruff & Co., at Dubuque, in the State of Iowa, to wit, in said northern district of Illinois; and whereas, afterwards, the said defendants, to wit, on the day and in the year last aforesaid, at Watertown, in the State of New York, to wit, at Chicago, in the said northern district of Illinois, as such copartners, by said firm name of West, Woodruff & Co., made their certain promissory note in writing, bearing date on the day and in the year last aforesaid; in and by which said note, the said defendants, by their said firm name and signature of West, Woodruff & Co., then and there promised to pay, one year from the date thereof, to wit, the day and year last aforesaid, at Hungerford's Bank, Adams, five thousand dollars, with interest, to the order of said defendants, Gilbert Woodruff and Isaac Munson, then and there being residents and citizens of the State of Iowa, as aforesaid, for value received; and the said defendants then and there delivered the said note, duly indorsed by said payees, to one Julius Fox, then and there being a citizen and resident of the State of New York, who,
7 afterwards, to wit, on the day and year last aforesaid, at Watertown aforesaid, to wit, at Chicago, in said northern district of Illinois, for a valuable consideration, and in the due course of trade and business, duly indorsed and transferred the said note to this plaintiff.

And whereas by the laws of the State of New York, where the said note was made payable, existing at the time of the making and delivery of said note, to wit, on the day and in the year last aforesaid, the lawful rate of interest was seven per centum per annum, by means whereof, and by force of the statute in such case made and provided, the said defendants, by their said firm name of West, Woodruff & Co., then and there became liable to pay to the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note, and being so liable, the said defendants, in consideration thereof, afterwards, to wit, on the day and in the year last aforesaid, at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay to the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of said note.

8 And whereas, also, the said defendants, on the 15th day of October, in the year of our Lord one thousand eight hundred and fifty-seven, at Watertown aforesaid, to wit, at Chicago, in the district aforesaid, being copartners doing business at the place aforesaid, and under the firm name and style of West, Woodruff & Co., as aforesaid, as such copartners, and by their firm name aforesaid, made their certain other promissory note in writing, dated on that day, and in the year aforesaid, in and by which said note, the said de-

fendants, by their said firm name and signature of West, Woodruff & Co., then and there promised to pay, one year from the date of said note, to wit, the day and year last aforesaid, at Hungerford's Bank, Adams, five thousand dollars, with interest, to the order of said defendants, Gilbert Woodruff and Isaac Munson, then and there being citizens and residents of the State of Iowa, as aforesaid, for value received, and the said note was then and there delivered by the said defendants, duly indorsed by the payees aforesaid, to wit, the said defendants, Gilbert Woodruff and Isaac Munson, to one Wil-
9 liam Fox, then and there being a citizen and resident of the State of New York, who, afterwards, to wit, on the day and in the year last aforesaid, at Watertown aforesaid, to wit, in the district aforesaid, for a valuable consideration, and in the due course of trade and business, duly transferred the said note to one Julius Fox, also then and there a citizen and resident of the State of New York, who, afterwards, to wit, on the day and in the year last aforesaid, at the place aforesaid, to wit, in the district aforesaid, for a valuable consideration, duly indorsed and transferred the said note to this plaintiff.

And whereas, also, by the laws of the said State of New York, where the said note was made payable, existing and in force at that time, to wit, on the day and in the year last aforesaid, the lawful rate of interest was seven per centum per annum, by means whereof, and by force of the statute in such case made and provided, the said defendants, by their said firm name of West, Woodruff & Co., then and there became liable to pay to the said plaintiff the said
10 sum of money in the said note specified, according to the tenor and effect of the said note, and being so liable, the said defendants, afterwards, to wit, on the day and in the year last aforesaid, at the place and by their firm name aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay to the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note.

And whereas, also, the said defendants, afterwards, to wit, on the 29th day of September, in the year of our Lord one thousand eight hundred and sixty-two, to wit, at the district aforesaid, became and were indebted to the said plaintiff in a large sum of money, to wit, the sum of seven thousand dollars of lawful money, for the work and labor, care and diligence, attention and attendance of the said plaintiff by the said plaintiff before that time done, performed, bestowed, and given, in and about the goods, chattels, wares, machinery, property, premises, possessions, and business of the said defendants, and for the said defendants, and at the special instance and request of said defendants, and also for divers materials and other neces-
11 sary things by the said plaintiff before that time found, furnished, provided, used, and applied in and about that work and labor for the said defendants, at the like special instance and request of said defendants, and being so indebted to the said plaintiff, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and then

and there faithfully promised the said plaintiff well and truly to pay to said plaintiff said sum of money last mentioned, when the said defendants should be thereunto afterwards requested.

And whereas, also, afterwards, to wit, on the same day and year and at the place aforesaid, in consideration that the said plaintiff had before that time done, performed, bestowed, and given other work and labor, care and diligence, attention and attendance of the said plaintiff in and about the goods, chattels, wares, machinery, property, premises, possessions, and business of the said defendants, at the request of said defendants, and had also, at the like special instance and request of said defendants, before that time found, furnished, provided, used, and applied divers other materials and necessary things in and about the said last-mentioned work and labor of the said plaintiff, the said defendants undertook and then and there faithfully promised the said plaintiff well and truly to pay to the said plaintiff so much money as the last aforesaid work and labor and materials of said plaintiff at the time aforesaid were reasonably worth, when said defendants should be thereunto afterwards requested; and the said plaintiff avers that the same at the said time were reasonably worth the further large sum of seven thousand dollars of like lawful money, at the time and place aforesaid, whereof the said defendants, afterwards, to wit, at the time and place aforesaid, had notice.

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And whereas, also, the said defendants, afterwards, to wit, on the same day and year and at the place aforesaid, became and were indebted to the said plaintiff in a large sum of money, to wit, the sum of seven thousand dollars of lawful money, for divers goods, wares, and merchandise by the said plaintiff before that time sold and delivered to the said defendants, and at the special instance and request of the said defendants, and being so indebted to the said plaintiff, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay to the said plaintiff the said sum of money last mentioned when the said defendants should be thereunto afterwards requested.

13

And whereas, also, afterwards, to wit, on the same day and year and at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendants, sold and delivered to the said defendants divers other goods, wares, and merchandise of the said plaintiff, the said defendants then and there undertook and faithfully promised the said plaintiff that the said defendants would well and truly pay to the said plaintiff so much money as the last aforesaid goods, wares, and merchandise at the time of the sale and delivery thereof, were reasonably worth, when the said defendants should be thereunto afterwards requested; and the said plaintiff avers that the said goods, wares, and merchandise last mentioned, at the time of the sale and delivery thereof, were reasonably worth the further large sum of money, to wit, the sum of seven thousand dollars of like lawful

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money aforesaid, to wit, at the place aforesaid, whereof the said defendants, afterwards, on the same day and year and at the place aforesaid, had notice.

And whereas, also, the said defendants, afterwards, to wit, on the same day and year and at the place aforesaid, were indebted to the said plaintiff in the further large sum of money, to wit, the sum of seven thousand dollars of like lawful money as aforesaid, for money before that time lent and advanced by the said plaintiff to the said defendants, and at the like request of the said defendants, and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendants, and at the like request of the said defendants; and for other money by the said defendants before that time had and received, to and for the use of the said plaintiff; and for other money before that time and then due and owing the
15 said plaintiff for interest upon and for the forbearance of divers other sums of money before that time and then due and owing from said defendants to said plaintiff; and being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said several sums of money in this count mentioned, when the said defendants should be thereunto afterwards requested.

And whereas, also, the said defendants, afterwards, to wit, on the same day and year and at the place aforesaid, accounted with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiff, and then and there being in arrear and unpaid; and upon such accounting the said defendants then and there found to be in arrear and indebted to the said plaintiff in the further large sum of money, to wit, the sum of seven thousand dollars, of like lawful money as aforesaid; and being so found in arrear and indebted to the
16 said plaintiff, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff, the said sum of money last mentioned, when the said defendants should be thereunto afterwards requested.

Nevertheless the said defendants (although often requested, &c.,) have not yet paid the several said sums of money above mentioned in the several preceding counts mentioned, or any or either of them, or any part thereof, to the said plaintiff, (except interest on the same up to the 15th October, A. D. 1858;) but to pay the same, or any part thereof to the said plaintiff the said defendants have hitherto altogether refused, and still do refuse, to the damage of the said plaintiff of seven thousand dollars; and therefore the said plaintiff brings suit, &c.

HAINES & STORY,
Plaintiff's Attorneys.

Copy of instrument and account sued on, $5,000.

17 One year from date, for value received, we promise to pay to the order of Gilbert Woodruff and Isaac Munson five thousand dollars, with interest, at Hungerford's Bank, Adams.

WEST, WOODRUFF & CO.

WATERTOWN, *Oct.* 15, 1857.

Indorsed: G. Woodruff, Isaac Munson. Without recourse to me. Julius Fox. Received interest up to Oct. 15th, 1858.

Messrs. Gilbert Woodruff, Robert West, and Isaac Munson, to Josiah Mann, Dr.

To money lent and advanced	$7,000 00
To money paid, laid out, and expended	7,000 00
To money had and received to and for the use of said plaintiff	7,000 00
To goods, wares, and merchandise, sold and delivered	7,000 00
To labor and services	7,000 00
To balance due on account stated	7,000 00

Indorsed: Filed this 4th day of October, 1862.

WM. H. BRADLEY, *Clerk*.

18 On this day, to wit, the eighteenth day of October, A. D. 1862, came the said defendant, Gilbert Woodruff, impleaded, &c., by his attorneys, and filed in said clerk's office his pleas in said entitled cause; which said pleas are in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Illinois, of October term, 1862.

MANN *vs.* WOODRUFF, *et al.* } Ass't.

And the said defendant, Gilbert Woodruff, impleaded, &c., by his attorneys, Burgess and Root, comes and defends the wrong and injury, when, &c., and says that he did not undertake or promise in manner and form as the said plaintiff hath above thereof declared against him, imp'd, &c., and of this he puts himself upon the country, &c.

And for a further plea in this behalf, by leave, &c., said defendant, imp'd, &c., says *actio non*, because he says that the said promissory note, in the first and second counts mentioned, was made and
19 delivered in the State of New York, and by the terms thereof is made payable at the town of Adams, in said State; and upon the making of said note, to wit, on the 15th day of October, A. D. 1857, at Watertown, in the said State of New York, it was corruptly and against the form of the statute of the State of New York in such

case made and provided, agreed by and between Julius Fox, in said second count mentioned, and the said West, Woodruff & Co., the payees of said note, that he, the said Julius Fox, would lend and advance to the said West, Woodruff & Co., a certain sum of money, to wit, the sum of four thousand five hundred dollars, in manner following, that is to say: that he, the said Fox, would let them have a note made by Philander Smith and Cooper, for five thousand dollars, either then past due, or shortly to become due, on which there had accrued due interest, making the whole note five thousand and ninety-three dollars, which the said defendants were to collect, and when collected, were to pay him five hundred dollars one year thereafter, with interest, and to give him their note for five thousand
20 dollars, payable one year after date, with interest, and their further note for ninety-three dollars, payable on demand, with interest. That, accordingly, in pursuance of such corrupt and usurious agreement, the said Fox did then and there, to wit, on the said 15th October, A. D. 1857, deliver to the said defendants the said Smith and Cooper note, and the said defendants made their said note in said declaration set out, payable to said Woodruff and Munson, two of the defendants, who then and there indorsed the same in blank, and delivered the same so indorsed to said Julius Fox; and also the said defendants then and there made their note, dated Oct. 15, 1857, whereby they promised to pay Julius Fox, or bearer, on demand, ninety-three dollars, with interest, and *and* delivered the same to said Julius, who thereupon then and there, in further pursuance of said corrupt and usurious agreement, delivered to them the said note made by said Smith and Cooper. That afterwards, and on the 20th day of October, A. D. 1857, at Watertown aforesaid, in further pursuance of said corrupt and usurious agreement, the said defend-
21 ants having collected the money due upon the said note, made by Smith and Cooper, made their note to one William Fox, for the sum of four hundred and eighty-five dollars; that being the sum collected from said Smith and Cooper on their note, above the sum of four thousand five hundred dollars, so usuriously agreed to be loaned as aforesaid, by which said note the said defendants promised to pay Wm. Fox, or order, four hundred and eighty-five dollars, with in't, one year from date, for value received, and dated Watertown, Oct. 26th, 1857. And said defendants aver that they did, afterwards, pay the said notes for ninety-three dollars and four hundred and eighty-five dollars, respectively. And the said defendants further say, that the said sum of four hundred and eighty-five dollars, so agreed to be given and paid by the said defendants to the said Julius Fox, for such loan, and forbearance of said four thousand five hundred dollars for one year, and secured by the said notes as aforesaid, exceed the rate of seven dollars for the loan and forbearing of one hundred dollars for one year, contrary to the statute of the State of New
22 York in that behalf provided, whereby and by force of such statute the said note became, was, and is wholly void; and the said plaintiff received the same from said Fox, after due, and this he is ready to verify. Wherefore, &c.

And for a further plea in this behalf said def't, imp'd, &c., by leave, &c., says *actio non*, because he says, the said promissory note sued upon in this suit was in fact made and delivered in the State of New York, and is by its terms made payable at Adams, a place situated in the said State of New York. And this defendant further says, that the said defendants being in great want of money and in distressed circumstances, applied to the said Julius Fox, at and within said State of New York, for a loan of money, on or about the 15th day of October, 1857; and thereupon, with intent to avoid the statutes against usury of the State of New York, it was corruptly, and contrary to the form of the statute in such case made and provided, agreed, by and between the said defendants and the said Julius Fox, that the
23 said Julius Fox should lend them a note made by Smith & Cooper for the payment of money, on which there was to be paid five thousand dollars of principal and some interest, in all about the sum of five thousand and ninety-three dollars, to collect the same; that in consideration thereof, they should execute to him three notes for ninety-three dollars, payable with interest on demand, and also should make a note payable to Gilbert Woodruff and Isaac Munson, and to be indorsed by them in blank, for five thousand dollars, payable with interest one year after date, and when they should have collected the money due on said Cooper & Smith's note, should make their note for the difference between four thousand five hundred dollars, the sum actually by such agreement to be loaned to them, and ninety-three dollars, and the amount they should receive on said note at that time, supposed to be five hundred dollars. That in pursuance of this corrupt and usurious agreement the said defendants then and there made a note as follows to wit:

24 "On demand we promise to pay Julius Fox or bearer ninety-three dollars, with interest.

"WEST, WOODRUFF, & CO."

"OCT. 15, 1857."

And also gave to said Julius Fox then and there the note in said declaration counted upon, which was then and there indorsed in blank by said Woodruff & Munson, and the said Julius Fox then and there delivered to them the said Smith & Cooper note. That afterwards, in further pursuance of said corrupt and usurious agreement, the said Smith & Cooper, having paid the said note to the said defendants, they afterwards, to wit, on the 26th day of October, A. D. 1857, delivered to the said Julius Fox a note substantially as follows, to wit:

"$485. One year from date, for value received, we promise to pay Wm. Fox, or order, four hundred and eighty-five dollars, with in't.

"WATERTOWN, *Oct.* 26, 1857.

"WEST, WOODRUFF & CO."

And the said defendants further aver, that in further pursuance of said corrupt and unlawful agreement, they did pay the said
25 notes of ninety-three dollars and four hundred and eighty-five

dollars respectively, to wit, as the same fell due and were presented. And the said defendants further aver, that the said Julius Fox, did in and by said corrupt and usurious agreement, agree to receive from the said defendants, for the loan of said Smith —— Cooper note, for the sum of five thousand and ninety-three dollars, or thereabouts, and of great value, to wit, of the value of five thousand and ninety-three dollars, for the space of one year, the sums, respectively, of ninety-three dollars, payable with interest on demand, four hundred and eighty-five dollars, payable with interest one year from the 26th day of October, 1857, and five thousand dollars, payable one year from the date, 15th day of October, 1857, with interest; and that the agreement to pay, for the loan of said Cooper & Smith note, of the value aforesaid, the said several sums of ninety-three dollars, four hundred and eighty-five dollars, and five thousand dollars, as aforesaid, at the times and in the manner, and with the interest aforesaid, exceeds the rate of seven dollars for the loan and for-
26 bearance of one hundred dollars for a year, contrary to the statute of the State of New York in such case made and provided; whereby, and by force of the statute in such case made and provided, the said note for five thousand dollars counted upon in said declaration became, and was, and is wholly void, and this he is ready to verify. Wherefore he prays judgment.

And for a further plea in this behalf, said def't, impleaded, &c., by leave, &c., says *actio non*, because he says, that the said promissory note sued upon in this suit was in fact made and delivered in the State of New York, and by its terms is made payable at Adams, a place situated in the said State of New York. And this defendant further says, that the said defendant, at and within the said State of New York, applied to the said Julius Fox, on or about the 15th day of October, 1857, for a loan of money. That thereupon, with intent to avoid the statutes against usury of the State of New York, it was then and there, corruptly and contrary to the form of the statute of said State in such case made and provided, agreed by and be-
27 tween the said defendants and the said Julius Fox, that he, said Julius Fox, should lend them a note made by Smith & Cooper, for the payment of money, on which there was then due, or shortly thereafter to become due, the sum of five thousand dollars, or thereabouts, of principal and interest accrued thereof, of ninety-three dollars or thereabouts, together amounting to the sum of five thousand and ninety-three dollars, and of great value, to wit: of the value of five thousand and ninety-three dollars, and that the said defendants should proceed forthwith to collect the same, and that the said defendants on their part should execute and deliver to the said Fox their note for ninety-three dollars, payable with interest on demand, should make a note payable to the defendants, Woodruff and Munson, and to be indorsed by them for five thousand dollars, payable with interest one year after date, and should proceed with the collection of the money due or to become due on the said Smith & Cooper note, and when they should have collected the same, should make
28 their note for the difference between four thousand five hun-

dred and ninety-three dollars, and the amount they should receive in said note, which difference at that time was supposed would be five hundred dollars. That in pursuance of this corrupt and usurious agreement, the said defendants then and there made a note as follows, substantially, to wit:

"On demand, we promise to pay Julius Fox, or bearer, ninety-three dollars, with interest. Oct. 15, 1857.

"WEST, WOODRUFF & CO."

and delivered the same to said Julius Fox; and also then and there gave said Julius Fox the note in said declaration counted, which was then and there indorsed in blank by said Woodruff & Munson, and the said Julius Fox then and there delivered to them the said Smith & Cooper note. That afterwards, in further pursuance of said corrupt and usurious agreement, the said Smith & Cooper having paid to the said defendants the said note made by the said Smith & Cooper, they thereupon, afterwards, to wit, on the 26th day of October, A.
29 D. 1857, at and within the said State of New York, delivered to the said Julius Fox a note, substantially as follows, to wit:

"485. One year from date, for value received, we promise to pay Wm. Fox, or order, four hundred and eighty-five dollars, with int.

"WEST, WOODRUFF & CO.

"WATERTOWN, *Oct.* 26, 1847."

for which said note there was no other consideration save the said corrupt and usurious agreement aforesaid; and that in further pursuance of said corrupt and unlawful agreement, they did pay the said notes of ninety-three dollars and four hundred and eighty-five dollars, respectively, to wit, as the same fell due and were presented. And the said defendants further aver, that the said Julius Fox did, in and by the premises, corruptly and usuriously, and contrary to the form of the statute of the State of New York in such case made and provided, agree to receive from the said defendants for the loan of said Smith & Cooper note, for the amount of the value aforesaid,
30 for the space of one year, the sums, respectively, of ninety-three dollars, payable with interest on demand thereafter, four hundred and eighty-five dollars, payable with interest one year from the 26th day of October, 1857, and five thousand dollars, payable one year from the 15th day of October, 1857, with interest, (which last sum is contained in the note upon which this suit is brought;) and that the agreement to pay, for the loan of said Smith & Cooper note, of the value aforesaid, the said several sums of $93, $485, and $5,000, at the times, and in the manner, and with the interest aforesaid, exceeds the rate of seven dollars for the loan and forebearance of one hundred dollars for a year, contrary to the statute of the State of New York in such case made and provided, whereby and by force of such statute, the said note for $5,000 in said declaration mentioned became, and was and is, void; and this he is ready to verify. Wherefore he prays judgment, &c.

And for a further plea in this behalf, said defendant, impleaded, &c., by leave, &c., says *actio non*, because he says that the said promissory

note sued upon in this suit was in fact made and delivered in the State of New York, and by its terms made payable at Adams, a place situate in said State of New York.

31 And this defendant further says, that the said defendants, at and within the said State of New York, applied to the said Julius Fox, on or about the 15th day of October, A. D. 1857, for a loan of money; that thereupon it was then and there corruptly and usuriously, and contrary to the statute of the State of New York in such case made and provided, agreed by and between the said Julius Fox and the said defendants that he, said Julius Fox, would loan them a large sum of money, to wit, the sum of five thousand and ninety-three dollars, as follows: five thousand dollars to be repaid in one year, and ninety-three dollars on demand, each with interest. They, the said defendants, would pay him for such loan and forbearance the sum of four hundred and eighty-five dollars in one year, with interest; and to secure the repayment of said sum of five thousand and ninety-three dollars, and of said four hundred and eighty-five dollars, the said defendants should execute their notes for said amounts, respectively, payable as aforesaid. That, in pursuance of said corrupt and usurious agreement, the said defendants, at and within said State, made to the said Julius Fox the said note

32 for five thousand dollars, and also made their note for ninety-three dollars, payable on demand, with interest, to the said Julius Fox, and dated the 15th day of October, A. D. 1857; and also made their note in writing, dated Watertown, Oct. 26, 1857, and thereby promised to pay "Wm. Fox" or order four hundred and eighty-five dollars, with interest, one year from date, for value received, and delivered the same to said Julius Fox; and the said Julius Fox thereupon, in further pursuance of said corrupt and unlawful agreement, did lend and advance to the said defendants the said sum of five thousand and ninety-three dollars; and the said defendant saith that the said sum of four hundred and eighty five dollars, so agreed to be given or paid by the said defendants to the said Julius Fox, by means of said note payable to said "Wm. Fox," for such loan and forbearance of said sum of five thousand and ninety-three dollars, so secured as aforesaid, exceeds the rate of seven dollars for the forbearance of one hundred dollars for a year, contrary to the statute of the State of New York in such case made and

33 provided; whereby, and by force of the statute in such case made and provided, the said note for five thousand dollars was and is wholly void; and that the said plaintiff received said note from said Julius Fox after due; and this he is ready to verify. Wherefore he prays judg't, &c.

And for a further plea in this behalf, said defendant says *actio non*, because he says that the said note, long before and after the maturity thereof, was in the hands of said Julius Fox; and while so in his hands and owned by him, the said defendants paid and satisfied the same; and afterwards, and after the said note was so paid, and after the maturity thereof, the same was assigned to the said

plaintiff; and this he is ready to verify. Wherefore he prays judgment, &c.

And for a further plea in this behalf, said defendant, impl., &c., says *actio non*, because he says that the said note was for a long time in the hands of and owned by one William Fox; and while so in his hands and owned by him, the said defendants fully paid the same; and that said note was afterwards, and after the maturity
34 thereof, transferred to the said plaintiff; and this he is ready to verify. Wherefore he prays judgment, &c.

And for a further plea in this behalf, said defendant, imp'd, &c., says *actio non*, because he says that the said note, in the said declaration mentioned, was made in fact in the State of New York, and by its terms is made payable there; and that after the same fell due, to wit, on the first day of November, A. D. 1858, the same there being held and owned by Julius Fox, it was, at and within the said State, corruptly and contrary to the form of the statute of said State in such case made and provided, agreed by and between the said Julius Fox and the said defendants that if he, the said Fox, would forbear and give day of payment of the said note, they, said defendants, would pay him for such forbearance at and after the rate of fifteen per cent. per annum for the term for which the payment thereof should be foreborne; that thereupon the said defendants did pay the said Fox divers large sums of money, to wit, on the days and
35 of the amounts as follows, to wit: on the first day of October, A. D. 1858, one hundred twenty-five dollars; on the first day of January, 1859, a like amount; on the 1st day of April, A. D. 1859, a like amount; on the 1st day of July, 1859, a like amount; and on the 1st day of Nov., 1859, a like amount; on the 1st day of Feb'y, 1860, a like amount; on the 1st day of May, 1860, a like amount; and on the 1st day of August, 1860, a like amount; which said several sums of money were there corruptly and usuriously, and contrary to the form of the statute in such case made and provided, received by the said Julius Fox for the loan and forbearance to said defendants of the amount due on said note from time to time, respectively, as above stated; whereby the said note became, and was and is, wholly void; and the said plaintiff received and acquired the said note afterwards, and long after the same fell due; and this he is ready to verify. Wherefore he prays judg't, &c.

And for a further plea in this behalf, the said defendant, im-
36 pleaded, &c., by leave, &c., says *actio non*, because he says that the said promissory note, sued upon this suit, was in fact made and delivered in the State of New York, and by its terms is made payable at Adams, a place situated in the said State of New York; and that after the same fell due, to wit, on the 1st day of November, A. D. 1858, the same then being held and owned by Julius Fox, the said Julius Fox, at Adams, in the said State of New York, by a contract with Munson and West, two of the makers of said note, without knowledge or consent of this defendant, contracted and agreed with the said Munson and West, that in consideration that they would pay him, the said Julius Fox, upon the said note,

interest at the rate of ten per cent. per annum for the period of one year from that date, that he, the said Julius Fox, would forbear, and give to said Munson and West day of payment of said note, and it was then and there so agreed between the said Munson and West and the said Julius Fox; and the defendant avers that said Munson and
37 West did pay said Julius Fox, in pursuance of such agreement, the sum of ten per cent. per annum on the amount of said note for one year from the 1st of November, A. D. 1858, and that at the time the said note became due the said Munson and West were able to pay said note, and the same was collectable from them, but that the said Munson and West were insolvent when the time expired to which the payment of said note was extended, as aforesaid. And this defendant avers that he dissolved partnership with the said Munson and West long before the said note upon which the said plaintiff's suit is brought became due; and that the said Munson and West assumed the payment of said note, which was well known to the said Julius Fox at the time he extended the time of payment of said note, as aforesaid ; and this he is ready to verify. Wherefore he prays judgment, &c.

BURGESS & ROOT, *for Def't.*

Indorsed : Filed Oct. 18, 1862.

WM. H. BRADLEY, *Cl'k.*

38 On this day, to wit, the twenty-eighth day of October, A. D. 1862, came said plaintiff, by his attorneys, and filed in said clerk's office his demurrer in said entitled cause ; which said demurrer is in the words and figures following, to wit :

CIRCUIT COURT OF THE UNITED STATES,
Northern District of Illinois, ss:

JOSIAH M. MANN
vs.
GILBERT WOODRUFF *et al.* } October term, 1862.

And the said plaintiff, as to the said plea of the said defendant, Gilbert Woodruff, impleaded, &c., by him eighthly above pleaded, saith that the same and the matter therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having or maintaining his aforesaid action thereof against the said defendant, and that he, the said plaintiff, is not bound by law to answer the same. And this he, the said plaintiff, is ready to verify. Wherefore, by reason of the insufficiency of the said plea in this be-
39 half, the said plaintiff prays judgment and his damages, by reason of the not performing of the said several promises and undertakings in the said declaration mentioned, to be adjudged to him, &c.

HAINES & STORY, *Def'ts' Att'ys.*

CIRCUIT COURT OF THE UNITED STATES,
Northern District of Illinois, ss:

JOSIAH M. MANN
vs
GILBERT WOODRUFF *et al.* } October term, 1862.

And the said plaintiff, as to the said plea of the said defendant, Gilbert Woodruff, impleaded, &c., by him ninthly above pleaded, saith that the same and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having or maintaining his aforesaid action thereof against the said defendant, and that he, the said plaintiff, is not bound in law to answer the same. And this he, the said plaintiff, is ready to verify.

Wherefore, by reason of the insufficiency of the said plea in
40 this behalf, the said plaintiff prays judgment and his damages, by reason of the not performing of the said several promises and undertakings in the said declaration mentioned, to be adjudged to him, &c.

HAINES & STORY, *Def'ts' Att'ys.*

Indorsed: Filed Oct. 28th, 1862.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the thirtieth day of October, A. D. 1862, came said plaintiff, by his attorneys, and filed in said clerk's office his replications in said entitled cause; which said replications are in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES,
Northern District of Illinois, ss:

JOSIAH M. MANN
vs.
GILBERT WOODRUFF *et al.* } October term, 1862.

And the said plaintiff, as to the said plea of the said defendant, Gilbert Woodruff, impleaded, &c., by him first above pleaded,
41 and whereof he hath put *hath put* himself upon the country, doth the like.

And the said plaintiff, as to the said plea of the said defendant, Gilbert Woodruff, impleaded, &c., by him secondly above pleaded, saith, that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant; because he saith that the said promissory note in the said declaration mentioned, was made by the said defendants for a good and legal consideration, in manner and form as set forth above in said plaintiff's declaration, and not in pursuance of or upon the said corrupt and unlawful agreement, or for the purposes in the said plea of the said defendant mentioned in manner and form as the said defendant hath

above in his said second plea in that behalf alleged; and this the said plaintiff prays may be inquired of by the country, &c.

And the said plaintiff, as to the said plea of the said defendant, Gilbert Woodruff, impleaded, &c., by him thirdly above
42 pleaded, saith that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he saith that the said promissory note in the said declaration mentioned was made by the said defendants for a good and legal consideration in the manner and form as set forth above in said plaintiff's declaration, and not in pursuance of or upon the said corrupt and unlawful agreement, or for the purpose in the said plea of the said defendant mentioned, in manner and form as the said defendant hath above in his said third plea in that behalf alleged; and this the said plaintiff prays may be inquired of by the country, &c.

And the said plaintiff, as to the said plea of the said defendant, Gilbert Woodruff, impleaded, &c., by him fourthly above pleaded, saith that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he saith that the said promissory note in the said declaration mentioned was made by the said defendants for a good and
43 legal consideration, in manner and form set forth above in said plaintiff's declaration, and not in pursuance of or upon the said corrupt and unlawful agreement, or for the purpose, in the said plea of the said defendant mentioned, in manner and form as the said defendant hath above in his said fourth plea in that behalf alleged; and this the said plaintiff prays may be inquired of by the country, &c.

And the said plaintiff, as to the plea of the said defendant, Gilbert Woodruff, impleaded, &c., by him fifthly above pleaded, saith that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof, against the said defendant, because he saith that the said promissory note, in the said declaration mentioned was made by the said defendants for a good and legal
44 consideration, in manner and form as set forth above in said plaintiff's declaration, and not in pursuance of or upon the said corrupt and unlawful agreement, or for the purpose, in the said plea of the said defendant mentioned, in manner and form as the said defendant hath above in his said fifth plea in that behalf alleged; and this the said plaintiff prays may be inquired of by the country, &c.

And the said plaintiff, as to the plea of the said defendant, Gilbert Woodruff, impleaded, &c., by him sixthly above pleaded, saith that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he saith that no such payment was ever made of the said sum of money

in the said note, in the first and second counts of the said plaintiff's declaration mentioned, with lawful interest for the same, or any part thereof, in manner and form as the said defendant hath above
45 in his said sixth plea in that behalf alleged; and this the said plaintiff prays may be inquired of by the country, &c.

And the said plaintiff, as to the plea of the said defendant, Woodruff, impleaded, &c., by seventhly above pleaded, saith that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he saith that no such payment was ever made of the said sum of money in the said note in the said first and second counts of said declaration mentioned, with lawful interest, for the same or any part thereof, in manner and form as the said defendant hath above in his said seventh plea in that behalf, alleged; and this the said plaintiff prays may be inquired of by the country, &c.

HAINES & STORY.
Pl'ff's Att'ys.

Endorsed: Filed Oct. 30, 1862.

WM. H. BRADLEY, *Cl'k.*

46 On this day, to wit, the first day of November in the October term, adjourned term of said court, A. D. 1862, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JOSIAH M. MANN
v.
GILBERT WOODRUFF *et al.* } Assumpsit.

Now comes the plaintiff, by his attorney, and on motion leave is given to amend the replication on file herein.

On the same day, to wit, the first day of November, A. D. 1862, came said plaintiff, by his attorneys, and filed his amended replications in said entitled cause, which said amended replications are in the words and figures following, to wit:

CIRCUIT COURT OF THE UNITED STATES,
Northern District of Illinois, ss:

JOSIAH M. MANN
vs.
GILBERT WOODRUFF. } October term, 1862.

47 And the said plaintiff, as to the said plea of the defendant, Gilbert Woodruff, impleaded, &c., by him first above pleaded, and whereof he hath put himself upon the country, doth the like.

And the said plaintiff, as to the said pleas of the said defendant, Gilbert Woodruff, impleaded, &c., by him, secondly, thirdly, fourthly, and fifthly, above pleaded, saith that the said plaintiff, by reason of anything by the said defendant in those or either of those pleas alleged, ought not to be barred from having and maintaining

his aforesaid action thereof against the said defendants, because he says that no such corrupt or usurious agreement was ever made, nor was the said note in said declaration mentioned ever made or delivered, in pursuance of or upon any such corrupt or usurious agreement, in manner and form as the said defendant hath above in his said several pleas mentioned, or either of them, alleged and set forth, but the said note was made and delivered for a good and legal consideration in manner and form as said plaintiff hath above in
48 his said declaration set forth, and this the said plaintiff prays may be inquired of by the country, &c.

And the said plaintiff, as to the plea of the said defendant, Gilbert Woodruff, impleaded, &c., by him, sixthly, above pleaded, saith that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, because he saith that no such payment of the said sum of money in the said note in the first and second counts of said plaintiff's declaration mentioned, with interest thereon, or any part thereof, was ever made in manner and form as the said defendant hath above in his said sixth plea in that behalf alleged. And this the said plaintiff prays may be inquired of by the country, &c.

And the said plaintiff, as to the plea of the said defendant, Gilbert Woodruff, impleaded, &c., by him, seventhly, above pleaded, saith that the said plaintiff, by reason of anything by the said defendant in that plea alleged, ought not to be barred from having and
49 maintaining his aforesaid action thereof against the said defendant, because he saith that no such payment of the said sum of money in the said note in the first and second counts of said plaintiff's declaration mentioned, with interest, or any part thereof, was ever made in manner and form as the said defendant hath above in his said seventh plea in that behalf alleged. And this the said plaintiff prays may be inquired of by the country, &c.

HAINES & STORY, *Pl'ff's Att'ys.*

Endorsed: Filed Nov. 1, 1862. Wm. H. Bradley, cl'k.

On this day, to wit, the seventh day of November, in the October adjourned term of said court, A. D. 1862, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JOSIAH M. MANN
v.
GILBERT WOODRUFF, ROBERT WEST, and ISAAC MUNSON. } Assumpsit.

50 The court having considered, and being now fully advised, on the demurrer of the plaintiff to the eighth and ninth pleas of the defendant, sustains the same.

On this day, to wit, the second day of December, in the October adjourned term of said court, A. D. 1862, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

JOSIAH M. MANN
v.
GILBERT WOODRUFF, impleaded with ROBERT WEST and ISAAC MUNSON. } Assumpsit.

Now come the parties, by their attorneys, and thereupon, on issue joined by agreement, they waive the intervention of a jury, and for trial put themselves upon the court, and the court, after hearing the evidence and being fully advised, finds the issue for the plaintiff, and assesses the damages to the sum of six thousand four hundred and forty-five dollars and sixty-five cents.

51 It is thereupon considered and adjudged by the court that the plaintiff do have and recover of and from the said defendant, impleaded as aforesaid, the said sum of six thousand four hundred and forty-five dollars and sixty-five cents, the damages aforesaid, together with the costs and charges herein, amounting to the sum of one hundred and twenty-nine dollars and twenty-two cents, and that execution issue therefor.

On this day, to wit, the twenty-seventh day of January, A. D. 1863, in the December term of said court, A. D. 1862, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JOSIAH M. MANN
v.
GILBERT WOODRUFF, impleaded with ROBERT WEST and ISAAC MUNSON. } Assumpsit.

And now, at this day, come the said parties, by their attorney, and on defendant's motion, and it appearing to the court that

52 the facts are as hereinafter stated, and that the plaintiff's attorney has had notice of this motion, it is ordered that it be entered, *nunc pro tunc*, as of the second day of December, eighteen hundred and sixty-two, and as part of the entry of the judgment in this cause of that day, the following order, viz:

That the said judgment, by consent of parties in open court, is to stand as security merely for what may be actually due from the defendant to the plaintiff, with liberty to the plaintiff in the meantime to issue execution and make levy, but not to sell, and the cause to remain upon the docket, with leave to the defendant hereafter to make his defence upon the merits under the direction of the court.

On this day, to wit, the twenty-fourth day of February, A. D. 1863, in the December term of said court, A. D. 1862, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JOSIAH M. MANN
v.
53 GILBERT WOODRUFF, impl'd with ROBERT WEST and ISAAC MUNSON. } Assumpsit.

Now comes the plaintiff, by his attorneys, and enters a remittitur of the sum of six hundred and twenty dollars and fifty cents, on the

judgment entered against the said defendant on the second day of December, one thousand eight hundred and sixty-two.

On this day, to wit, the eleventh day of April, in the March adjourned term of said court, A. D. 1863, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

JOSIAH M. MANN *v.* GILBERT WOODRUFF, impl'd with ROBERT WEST and ISAAC MUNSON.	Assumpsit.

The court, having considered and being fully advised on the motion of the plaintiff to suppress the deposition of the defendant on file herein, sustains the same.

54 On this day, to wit, the twenty-second day of July, in the July term of said court, A. D. 1863, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JOSIAH M. MANN *v.* GILBERT WOODRUFF, impl'd with ROBERT WEST and ISAAC MUNSON.	Assumpsit.

Now come the parties, by their attorneys, and under the leave of the court theretofore entered, permitting the defendant to make a defence upon the merits under the direction of the court as heretofore given, and thereupon, come a jury of good and lawful men, to wit: Henry Boyer, Thomas Speer, Charles Schryner, Addison Phillso, Nathaniel Sleeper, L. E. Hemmingway, St. Clair Nicholson, Thomas Pringle, J. S. Russell, William Davenport, J. Flagg, and Martin Philips, who are all duly elected, tried, and sworn, to well and truly try said issue, after hearing the evidence, the arguments of counsel and the instructions of the court, return into court

55 the following verdict: "We, the jury, find and report that there was actually due to the plaintiff on the second day of December, A. D. one thousand eight hundred and sixty-two, the sum of five thousand one hundred and fifty-six dollars and eighty-six cents, and no more;" and judgment having been entered on the said second day of December, A. D. one thousand eight hundred and sixty-two, for the sum of six thousand four hundred and forty-five dollars and sixty-five cents, in favor of the plaintiff; and the said plaintiff having, on the twenty-fourth day of February, A. D. one thousand eight hundred and sixty-three, entered a remittitur for the sum of six hundred and twelve dollars and fifty cents. The court now orders and directs that the plaintiff enter a further remittitur for the sum of six hundred and seventy-six dollars and twenty-nine cents, which is accordingly done, and that the judgment of December the second, A. D. one thousand eight hundred and sixty-two, stand in full force and effect, but the amounts now and heretofore remitted are to be considered as credits and payments on the said judg-

56 ment of the date of the same, and the defendant thereupon moves the court for a new trial, which motion is overruled.

On the trial of the foregoing cause, the defendant, by his attorneys, took exceptions, which were duly signed and sealed by the judge of said court, and are in the words and figures following, to wit:

MANN
vs.
WOODRUFF *et als.* } Bill of exceptions.

In order properly to understand some of the points made, and the reasons for the action of the court, it is necessary to state what took place in court in November and December, 1862. On the 11th of November, 1862, this case stood on the docket for trial, liable to be called in its order. On that day, the defendants' counsel, Mr. Burgess, filed an affidavit for the continuance of the cause, on the ground that he had not the testimony of an absent witness, which would tend to prove the note in controversy was founded, in part, on a usurious consideration. Two or three days afterwards,
57 the attention of the court was called to the affidavit, and the application for a continuance made. The court then stated that the ground of the application could not be regarded favorably, especially as the note was made in the State of New York, where the penalty for usury was so severe, but that the case would be passed as long as possible while the jury was in court, in order to give the plaintiff a trial during the term, and the defendants a reasonable opportunity to obtain the testimony, but the court then also stated that the case could not be continued, because proper diligence had not been used. Just prior to the discharge of the jury, the plaintiff called the case up, and the defendants' counsel made a further application for a continuance on the same ground, which was overruled. Considerable discussion took place between the counsel, before the court overruled the application, as to the nature of the defence there sought to be made, and the degree of diligence used by the defendants in obtaining the testimony. Afterwards the counsel of the defendants stated that there were some payments made on the note, which had not been indorsed. The court said that
58 all payments ought to be allowed, and thereupon the plaintiff's counsel, Mr. Storey, said if any payments had been made which were not credited he would allow them at any time. The defendants' counsel then said that was all they wanted, viz.: To have the payments on the note credited. It was also said by defendants' counsel, during the same conversation, that they were willing, at any time, to pay the balance into court, after deducting payments. The plaintiff's counsel stated he was willing to allow any payments, but insisted upon a judgment. It was then proposed and acceded to by the counsel of both parties, that judgment might be entered, the plaintiff to take out execution and levy, but to make no sale, and the defendants were to have liberty to show any payments actually made. This conversation took place before or immediately after the adjudication of the court upon the case, as entered of record on the 2d of December, 1862, and before the court passed on

to other business. The judgment was entered without conditions, because it was the understanding of both parties and the court, (the court stating expressly that no conditions should be annexed
59 to the judgment, but that counsel might file a stipulation,) that the proof of the payments were to made within a few days.

The attention of the court, during the term, was not called again to the case by either party, it being clearly understood by the court, and stated in the hearing of the counsel of both parties, and not objected to, that the only question left open was as to the amount of money loaned, and the payments made since the loan, and that proof might be furnished upon these points, after the date of entry of the judgment.

The court adjourned, without day, on the 13th of December, and met again, as required by law, on the 15th of December, 1862. During the sitting of the court, at the December term, some time in January, the day not recollected, (not far from the twentieth of that month,) the counsel of the defendants called the attention of the court to a modification of the order of judgment of the 2d of December previous, which he desired to have made, but the court declined to take any action until the plaintiff's counsel had been notified, and had an opportunity of examining the order, which, having been done on the 27th of January, 1863, (but the plaintiff's counsel not
60 appearing in court,) the counsel of defendants presented the following draft of an order :

U. S. cir. c't.

MANN *vs.* WOODRUFF.

And now, at this day, comes the said defendant, Woodruff, by his att'y, Burgess, and, on his motion, and it appearing to the court that the facts are as hereinafter stated, and that the pl'ff's attorney has had notice of this motion, it is ordered that it be entered, *nunc pro tunc*, as of the 2d day of December, 1862, and as part of the entry of the judgment in this cause of that day the following order, viz.:

"That the said judgment, by consent of parties in open court, is to stand as security merely for what shall, *upon the trial of the issues herein, if anything be found to be due the plaintiff*, with liberty to the plaintiff, in the meantime, to issue execution, make levy, but not to sell, and the cause to remain upon the docket to abide the further order of the court." Which the court refused to allow to be entered, on the ground that it was not in accordance with the agreement of the parties made on the 2d of December, and the court then made erasures and additions to the draft of the order, at the same
61 time saying that the court intended to make it subject to its control, and not allow the defence of usury, but to carry out, in good faith, the agreement made at the time of judg't. The counsel of the defendants did not assent to these erasures and alterations.

The order was then entered as it appears of record of the 27 of January, 1863. And on the 24th of February, 1863, the plaintiff's counsel entered a remittitur, as appears of record. Afterwards the counsel of the defendants claimed that the judgment of the 2d of December, 1862, was entered under some misrepresentation of plaintiff's counsel, and the counsel of plaintiff took some exceptions to the entry of January 27, 1863. Motions and affidavits were filed in March and April, 1863. The court, at that time, declined to interfere with either order, on the ground, as stated in court, that the order of Jan'y 27, 1863, left the matter under the direction of the court—but no order was entered of record.

The case under the above state of facts (the plaintiff having in the meantime taken out execution and made a levy, but nothing more) was on the docket for trial at the July term, 1863, and was
62 called by the court on the 22d of July; and thereupon some conversation took place between the respective counsel and the court as to the position of *of* the case, and how it stood on the order made on the 27th of January, and some intimation was given by the counsel of the defendant, Mr. Burgess, that they had a right to insist upon the defence of usury. The judge immediately said that was contrary to his understanding of the matter, that he was willing the utmost latitude should be allowed as to the amount of the loan, and to prove any payments which had been made, and that was the only question left open, that any other course would not be in conformity with the agreement of the parties made in court. The counsel of the defendants then stated that all they wanted was to be allowed the proper credits—payments—and if they were allowed, they would pay the balance into court at any time. The judge then said if that was the understanding he would hear the testimony, and ascertain the amount due, if the parties would agree to it, or they might refer it to auditors or arbitrators, or to a jury. The defendant's counsel proposed to submit it to a jury. The court
63 then said distinctly: "It is the understanding that the only question to be submitted to the jury shall be as to the payments and credits to be allowed them, a jury may be empannelled." Both parties assented to this, and a jury was called accordingly. There was never any controversy made after the judgment as to the amount actually loaned. The plaintiff's counsel then offered the note in evidence.

"WATERTOWN, *Oct.* 15, 1857.

"($5,000.) One year from date, for value received, we promise to pay to the order of Gilbert Woodruff and Isaac Munson, five thousand dollars, with interest, at Hungerford's Bank, Adams.

"WEST, WOODRUFF & CO."

"Rec'd interest up to Oct. 15, 1858."

Endorsed: "G. Woodruff, Isaac Munson, without recourse to me, Julius Fox," and rested his case.

And thereupon the defendant, to prove the issues on his part, read to the jury the depositions of Isaac Munson, opened May 26th, 1863, taken in this cause, and the accompanying exhibits as follow, to wit:

64 The deposition of Isaac Munson, of Watertown, of the county of Jefferson and State of New York, a witness of lawful age, produced, sworn, and examined on his corporal oath, on the nineteenth day of May, in the year of our Lord one thousand eight hundred and fifty-three, at the office of Edmund B. Wynne, in the town of Watertown, in the county of Jefferson and State aforesaid:

To the first interrogatory the witness says: I know the defendant in this suit. I don't know as I am acquainted with the plaintiff.

To the second interrogatory the witness says: I reside in the village of Watertown, Jefferson county, New York.

To the third interrogatory the witness says: some time previous to the giving of the $5,000 note, set forth in the defendant's interrogatories, which was in October, 1857, I saw one William Fox, then a resident of Watertown, who said he had been talking with the defendant, Gilbert Woodruff, about a loan of $5,000 to the firm of West, Woodruff & Co., for his brother, Julius Fox, who lived in Adams, Jefferson county, New York. I asked him what the terms were, he said that we were to give a note for $5,000, at 7 per cent. on
65 one year's time, and in addition thereto give a note for the sum of $500, with interest, at 7 per cent. also. I told him that I thought the interest was too high, more than we could afford to pay. I was a member of the firm of West, Woodruff and Co., composed of the persons named as def'ts in the record in this action. We did business in the city of Dubuque, Iowa, as millers; had a flouring mill there. When I complained of the high rate of interest, Wm. Fox said his brother Julius was getting ten per cent. more from Smith & Cooper, of Adams, for his money. I told him I would see Mr. Woodruff, and talk with him again. The next time he came into my office, in Watertown, and Julius Fox with him; Gilbert Woodruff was there also. We then gave the $5,000 note, which is set forth substantially in the defendant's interrogatories. I think I wrote the note and signed it for the company. We agreed to borrow the money on the terms proposed by William Fox for Julius Fox. The cash was not paid then by Julius, but a note for $5,000 against Smith & Cooper was handed us by Wm. Fox. I gave another note in name of West, Woodruff & Co. for ninety-three dollars, dated 15th October,
66 1857. This is the note. (Note here produced and herewith returned, marked "Exhibit A.") It was given to Julius as well as the $5,000 one, and was given for the excess of interest over $5,000 due on the Smith & Cooper note. While the conversation was going on between Woodruff, Wm. Fox, and myself, Julius appeared to be desirous of avoiding any conversation about the loan, or the terms on which it was made subsequently. We gave a note for $485, instead of $500. This was given at a third interview I had with William Fox, on or about the 26th day of October, 1857.

This note was made for $485 because of the delay in the payment

of the money by Smith & Cooper, on their note; I identify this as the note in question, (note here produced marked "Exhibit B" and herewith returned. I paid the $485 note to Wm. Fox, and I think the $93 note also to him; when the $5,000 note became due Wm. Fox and Julius Fox came together for the money. I paid the $485 in part, and the interest on the $5,000 note, and told them we could not pay the principal then, and could not pay so high a rate of interest.
67 Julius said that if the note was allowed to run any longer he wanted I should pay 15 per cent., as he could do better with his money than let it at any less rate; finally I agreed to give him ten per cent. and pay it every three months ; and in accordance with this new agreement I paid interest for said West, Woodruff & Company, to Julius Fox, on the said $5,000 loan at this rate for nearly two years, and took receipts from him for such quarterly payments; the receipts shown me are some of those I took from him for such payments of interest. (Receipts here produced, and respectively marked "Exhibits" "C," "D," "E," and "F," and herewith returned.)

To the *fourth* interrogatory the witness says : William Fox acted in the whole transaction as an agent for Julius, and under the circumstances I have already stated in my answer to the third interrogatory, he claimed throughout the whole transaction to be acting for Julius.

To the *fifth* interrogatory the witness says: I have already stated in my answer to the third interrogatory which of the said notes were paid. The $485 note was paid by me to Wm. Fox, between the 26th of October, 1858, and the 10th of November following; I
68 think I paid the $93 note to William Fox also a short time after it was made; the note was paid in cash.

To the *sixth* interrogatory the witness says : at the time of giving the $5,000 note the Hungerford Bank, Adams, was located in the village of Adams, Jefferson county and State of New York.

To the *seventh* interrogatory the witness says : I was called upon for the payment of the $5,000 note at Watertown, shortly after it became due, by Julius Fox, who came accompanied by Wm. Fox, and the conversation occurred and the transactions were had with Julius Fox as detailed by me in my answer to the third interrogatory. I have produced to the commissioner and verified all the vouchers for the quarterly payments of interest to Julius Fox I can find.

To the *first* cross-interrogatory of the plaintiff the witness says: I have not seen or heard read the cross-interrogatories or the interrogatories in chief, or copies or abstracts of them previous to their being severally and consecutively read to me by the commissioners, for my examination at this time, nor have I seen or heard read a copy or abstract of my former deposition since the same was re-
69 turned by the former commissioner.

To the *second* cross-interrogatory the witness says: I have not seen or corresponded or conversed with the said Gilbert Woodruff or any person for him or on his behalf upon the subject of the suit between these parties and my testimony to be given by me therein except the instance following. The day before or on the day

of my former examination in this case said Woodruff came into my office, told me that I was to be examined, and asked me to relate the transactions pertaining to the loan from Julius Fox, as I recollected them. I did so substantially, as I have detailed them in my answer to the third interrogatory; this occurred at my office. I think no one was present except Gilbert Woodruff and myself; I did not examine any papers there, but after I had related the circumstances to Mr. Woodruff, which he heard without making any comments, he asked me to look at the interrogatories and pleadings, which he said were in the office of Mr. Starbuck, if I had time to do so; he then left the office and I did go to Mr. Starbuck's office and there read over by myself the pleadings and the interrogatories to be propounded to me.

70 I have not read any letters from said Woodruff or his counsel, or any other person, concerning this suit or any of the matters pertaining to the claim of plaintiff therein since the said return of said commission, or at any other time whatever.

To the third cross-interrogatory the witness says: I have not, since the 29th day of September, 1862, conversed with said Gilbert Woodruff, or his counsel, or Mr. Starbuck, or Mr. Sawyer, or either of them, or any other person, to my knowledge, concerning what I was to, or could, or would, or had better testify to upon my examination in this suit, except in the case of my conversation with Gilbert Woodruff, above detailed in my answer to the 2d cross-int., and except, also, that some time after my former examination in this case, Mr. Starbuck came and saw me, and drew an affidavit which I made as to the manner in which my former examination had been conducted, which affidavit I understood was to be used in the case. No other conversation took place between Mr. Starbuck and myself, except in relation to what transpired during the time of my said former exami-

71 nation. I did have access to and examine the interrogatories and cross-int. previous to the former examination, in the manner I have detailed in my answer to the second cross-interrogatory, and in no other way, but I have not seen or heard these interrogatories and cross-interrogatories read, or abstracts of them, except as Mr. Wynn, the present commissioner, has read them to me on this examination. I did not read the interrogatories and cross do. on the first examination with a view to shape my answers to the interrogatories, but simply and solely that I might understand what it was proposed to examine me upon, and also to give as far as I could an intelligent connected history of the transactions pertaining to the loan in question. I have not rec'd any advice and suggestions from any counsel. I have no counsel whatever in this matter, nor have I rec'd any advice or suggestions from Gilbert Woodruff, or both, or any other person, as to what answers should be made to the said interrogatories and cross do. upon this or any former examination; and as regards my "own interest" in this case, I have none whatever; I feel perfectly indifferent between the parties to it, and I further state, if I may be allowed so to do, there are no business, and very

72 little social relations existing between said Gilbert Woodruff and myself, and none whatever as between myself and the said Robert West.

To the fourth cross-interrogatory the witness says: My occupation now, and in 1857, is and was that of a physician. I have also been for some years past secretary of an insurance company, located and doing business in Watertown aforesaid.

To the fifth cross-interrogatory the witness says: William Fox is not living; he died, I think, in the spring of the year 1859, at Watertown, N. Y. During the year previous to his death, and in 1857, he resided at Watertown aforesaid. He had no particular business that I am aware of. He owned some houses and other real estate, and lived on his income, so far as I know. The first time I saw Wm. Fox in relation to this loan was in the afternoon, on the steps leading to my office. No one was present except ourselves. The second interview was also in the afternoon, in my rear office in Watertown aforesaid; the def't Woodruff and myself had an office there then. The
73 parties present at said 2d interview were the said Woodruff, William and Julius Fox, and myself; no one else. The third interview was also in my office. I do not recollect the time of day. No one present that time except Wm. Fox and myself, to my recollection. And at the interview the year after, (1858,) and after the note for $5,000 fell due, Julius and Wm. Fox and myself were present. It was at my said office. I cannot, at this interval of time, say who first spoke at said interview, except in the case of the first one, and there I think Wm. Fox spoke first. He came and overtook me as I was going up the steps. He said he had been talking with Gilbert Woodruff in relation to a loan of $5,000 Woodruff wished to effect for West, Woodruff & Co., and which Julius Fox would loan if everything was made right. I said to him what terms are wanted. He replied that we were to give a note for $5,000, and int. at 7 per cent., running one year, and also an additional note for $500, on same interest. I said, I think the rate of interest is too high; more than we can afford to pay upon this. Mr. Wm. Fox replied that Julius was getting ten per cent. then for his money, from Smith & Cooper.
I told him I would see Mr. Woodruff and talk with him again.
74 I think that is all the conversation between us then, or substantially so at that time, in reference to said loan. We stood near one another on the steps when talking. I cannot speak particularly of Wm. Fox's conduct and movements during that interview. Have no recollection of anything different from the ordinary tone and manner of one person speaking to another on business. I cannot say what I was particularly engaged in during the day, both previous to and subsequent to each or any of these interviews and conversations mentioned by me. At the second interview I think we were all seated except Julius Fox; we were seated together or in the immediate vicinity of one another, while Julius was in the other part of the room, walking up and down, and by his "conduct and movements" seemed to wish to avoid hearing or appearing to hear what was going on, for during the time the interview was being had, I understanding and believing the loan was to be made by and for him, left my seat and went to speak to him about the loan, but he turned around and waved me off, saying in substance "William will attend

to all this, he arranges everything," when I repaired to my seat again, and said nothing more to him. Wm. Fox said in substance
75 that he was ready to arrange the loan then, as he had talked to Woodruff and myself before. We told him that the rate was very high, but that, on reflection, we would take the $5,000 on the terms proposed. I think I sat down and drew the $5,000 note. Wm. Fox said that Julius had the money in the shape of a note then due against Smith & Cooper, of Adams, who, as we well knew, were perfectly good, and that Smith & Cooper would pay the money on presentation. There was some interest on the note, and I believe I figured it up and gave the note for $93, for such excess of interest over the $5,000. Wm. Fox said that would do, and when he wanted the $500 note also, either Woodruff or myself said that when Smith & Cooper paid the money on their note we would give the $500 note. Wm. Fox said that would do, or would be all right. I can say nothing more or different of the "conduct" and "movements" of the parties in this interview than I have detailed. After the notes were drawn we separated, Julius and Wm. Fox going away, I think, from the office. The third interview was not far from the 26th day
76 of October, 1857, and, as I have said, was in my office again. No one that I recollect of by, except William Fox and myself. He came there, he said, for the note, and I told him that as there had been some delay in getting the money from Smith & Cooper, there must be something deducted from the note of $500 that was intended to be given. We had been somewhat disappointed in not getting the money at once of Smith & Cooper, and hence wanted a deduction. I think Wm. Fox and myself agreed on $15 00, and I wrote and delivered the $485 note heretofore produced on this ex'm'n. Gave that to William. I think we were seated, and near one another, when in the office; how far apart I cannot say. I did not discover anything different in his conduct, manner, or statements, from what I noticed in him at the first interview. At the interview in 1858, after the $5,000 note fell due, Julius and William Fox came together for the money on it. I think the principal conversation was with Julius. I paid a portion of the $485 note, and the whole of it, subsequently. Julius, before this, said he wanted the pay on the note—the $5,000. I
77 told them we could not pay the large note then; would like to have it run longer, but I did not think it ought to be continued at so high a rate of interest. Julius said he could make his money pay 15 p'r c't.; he did not wish to let it at any less rate. I said, finally, that we would give him ten per cent. per annum, and pay it every three months. Julius said he would do it, though if it run longer he ought to have 15 p'r cent., but took the ten. I paid for West, Woodruff & Co. the interest on the $5,000 note. I do not recollect particularly anything else that occurred at this interview between us. I cannot say how near we were seated to one another, or whether either of the three stood up during the interview any portion of the time; we were near enough to readily converse and do business with one another. I cannot "minutely" give the "conduct and movements" of each one of us present at that interview. I do

not think it was different from any ordinary business intercourse, as regards "statements." I again distinctly understood as theretofore that Julius Fox was the principal in the transaction; that the money was his; the loan effected on his account and behalf.

78 To the sixth cross-interrogatory the witness says: the note given to West, Woodruff & Co. by Julius Fox was a note for $5,000, made by Philander Smith and John C. Cooper, dated some time in the summer or fall of 1857. I think I cannot say how long it had to run. It was due when it came into our hands. I think it purported to be drawn at Adams, N. Y., and I think payable to Julius Fox, but whether bearer or order I cannot state. The Smith & Cooper note was paid to us by them, paid, I believe, into the Watertown Bank & Loan Co.—the first payment was somewhere about $3,000. I have no memoranda here by which I can tell the dates of the payments by Smith & Cooper, but the whole note was paid in a short time after we had it of Julius Fox, not immediately, but within a few weeks afterwards. They did not pay any of the note to me personally. The $93 note I paid a short time after it was made, at Watertown, to Wm. Fox, in current funds—can't say who was present at payment.

79 I say I paid it, but I am not by any means so positive about that as I am of paying the $485 00 note. I think I paid the $93 note, but may not have done it. It was paid, however, and taken up by the firm. The $485 note I paid to Wm. Fox, shortly after it was due, at Watertown aforesaid—can't say who was present when I made the payments upon it. It was paid up within two or three weeks after it fell due. I recollect that we owed somewhere about $3,000 at the Watertown Bank & Loan Co., and I believe the balance of the $5,093, rec'd from Smith & Cooper, was drawn by Mr. Woodruff and taken to Dubuque, and there used by the firm. I think I have stated all the circumstances, and my knowledge of these payments so far as I can recollect. The note and papers annexed to the deposition I understand were handed to the present commissioner by Mr. Starbuck, and as I have testified, have been verified by me and produced as exhibits as above set forth. I think that when I rec'd the notes and receipts, as I rec'd them or had occasion to write to the firm at Dubuque, I enclosed them and sent them by mail to the firm there; they had been a long time out of my possession,

80 when they were produced and shown me on the former examination, and I have not seen them since until the commissioner produced them here. They were wrapped up in the commission and interrogatories handed him to execute, as I am informed by him. As to their being the identical papers, I knew my usual handwriting, and am acquainted with that of Julius Fox, and have no doubt the receipts are in his hand-writing, and the same ones I, from time to time, rec'd from him as I paid the ten per cent. interest in quarterly payments. I think these rec'pts were rec'd by mail generally, from Julius Fox. If I paid any to him in person, I have no recollection of that fact now, hence I cannot state any conversation that occurred when I took these receipts. I may be technically interested with Gilbert Woodruff and West, in the defence of this

action, but I am not otherwise interested in the result, and I cannot say I am swearing or testifying in my own behalf. I have employed no counsel in the matter, and no one represents me, and as I have already remarked, I have no business relations now with either
81 Woodruff or West, and no social relations whatever with the latter. The firm did receive or apply $3,000 of the money on their joint indebtedness, their liability as a firm as heretofore stated, and the balance Gilbert Woodruff took to Dubuque.

To the seventh cross-interrogatory the witness says: I and my firm did negotiate a loan and receive money from Julius Fox in the year 1857. It was the same loan, money, and transactions, detailed by me heretofore, in my answers to the 3d, 4th, 5th, 6th, and 7th direct interrogatories, and in my answers to the 5th, 6th, and this 7th cross-interrogatory, and I have there stated, fully as I can, "the time when, place where, and building where the same was negotiated" and "received, the amount and kind of money, the form in which received;" and I do positively swear that Gilbert Woodruff and myself, on account of West, Woodruff & Co., did receive from and negotiate the loan and money in question with said Julius Fox, through William Fox, as heretofore in this deposition stated and detailed by me, and that it was at the times, the persons present, and "conversations of each" had, as also heretofore stated by me in this examination.

To the eighth cross-interrogatory the witness says: the
82 first time I saw Julius Fox in connection with this loan, was when he came with his brother William in my office—Woodruff also present; think it about the fifteenth of October, 1857; can't give the day of the week; was in the afternoon. In reply to the interrogatory as to what was said in the "conversations" between Julius Fox and myself, all that I can recollect is, that while William Fox, Woodruff, and myself were discussing the terms of the loan, I left my seat and went to where he was walking in the back or another part of the room, and commenced speaking to him that the rate of interest was too much, when he to an extent interrupted me, and turned around saying, with a wave or gesture of his hand, in substance, "William will attend to all this; he arranges everything." I thought I understood pretty well what he meant by this, and left him and went back to where the others were. I have no recollection of any other conversation with Julius Fox at this time, or of his saying anything else while there. I cannot state what sort of weather there was on that day, nor what I was particularly engaged in during that day, before and after the interview, and the same thing exists as to my
83 recollection of the weather and my engagements on the day of the interview with him in the year 1858.

At the interview in 1858, in the month of October, Julius and William Fox came in company—wanted money on the $5,000 note. The "conversation or interview between myself and Julius Fox," was as follows, so far as I recollect: Julius said he wanted the money on the large note. I told him, and Wm. Fox also, that we could not pay it then; would like to leave it run longer, but I did not think it ought to run at the same rate of interest as up to that time. Julius said he

could make his money pay 15 per cent.; he did not wish to let it at any less rate. I said, finally, that we would give him ten per cent. per annum interest on the loan of $5,000, thereafter, and pay it quarterly. Julius finally said he would do it, though he ought to have 15 per cent. for the money. This is all that occurred in the way of conversation between Julius Fox and myself at that time. We made the payments at that time I have detailed in my answers to the direct and cross-interrogatories on that subject.

84 Wm. and Julius Fox and myself, can't say as to the day of the week. I fix upon the 15th of October, 1857, as the date of first interview with Julius Fox, because I recollect it was near the middle of that month, and the note we gave Julius was also dated on that day. I fix upon the month of October, 1858, as the time when I had the other interview referred to me by me with Julius Fox, because he and Wm. came to see me shortly after the note matured. It had been protested, I believe, for non-payment at the "Hungerford Bank, Adams," and it fell due about the middle of October, 1858.

To the ninth cross-interrogatory the witness says: I say that Wm. Fox acted on behalf of a party other than our firm of my own knowledge, because Wm. Fox always, during the negotiations for said loan, distinctly stated and claimed to me, and before me, that he was acting for Julius Fox. Josiah M. Mann was never present at any interview between myself and William, or Wm. and Julius Fox, relative to said loan. I have already, very fully, in reply to your cross-interrogatories, stated at what interview with William Julius was

85 present, and I have also as fully stated, in answers to both direct and cross-interrogatories, "the particulars" of the interview with Julius and William Fox after the loan was made, giving time, place, and all attendant circumstances so far as I recollect them.

To the tenth cross-interrogatory the witness says: No one has been present during this my examination in this action, except the commissioner, Mr. Wynn. It was agreed by the counsel here for the respective parties in this case, that the commission, interrogatories and cross do. should be handed to Mr. Wynn, the com'r, who should examine me himself, or rather, I go on and tell the facts as I recollect them to Mr. Wynn; who would, of course, reduce them to writing, as he has done. The examination has been held in the rear room of the com'r's law offices, the one occupied by himself, and no one in any way connected with this case has been present during the examination, nor, in fact, has any one else been present during such time. This examination commenced on the 19th inst., and as many as eight or ten recesses have taken place, because of the engagements and business of the commissioner, and the consequent frequent interruptions thereby, when persons came to do business

86 with Mr. Wynn. The examination was sometimes suspended so that I could go back to my office. When Mr. Wynn had time to attend to the examination again, he sent word to me. I have then gone to his office again, and the examination taken another start, and so on to this day and hour. I have not examined, or heard

read, or talked over my previous testimony before giving my answers upon cross-examination. No suggestions or advice have been given me by any person, other than the commissioner, concerning the language, form or effect of my answers, and the com'r used "language" or "form" so as to clearly and intelligibly express what I have said to him verbally. I have not conversed with or been spoken to upon the subject of my testimony, or of this suit by defendant, or on his behalf, or on my "own behalf," by any person during or preceding my examination.

ISAAC MUNSON.

Exhibit "A."

On demand, we promise to pay Julius Fox, or bearer, ninety-three dollars, with interest.

Oct. 15, 1857. WEST, WOODRUFF & CO.

Exhibit "B."

87 ($485.) One year from date, for value received, we promise to pay Wm. Fox, or order, four hundred and eighty-five dollars, with interest.

WEST, WOODRUFF & CO.

WATERTOWN, *Oct. 26th*, 1857.

Endorsed: Paid by J. Munson, $518 98, Oct. 26, 1858.

($424.) Received on the within note four hundred and twenty-four dollars, Oct. 27, 1858.

($4.) Received on the within note four dollars, Nov. 3, 1858. Paid by J. Munson.

Exhibit "C."

Rec'd. May 6th, 1859, of Isaac Munson, esq., one hundred and twenty-five dollars.

($125.) JULIUS FOX.

Exhibit "D."

Rec'd of Isaac Munson, July 16, 1859, one hundred and twenty-five dollars.

($125.) JULIUS FOX.

Exhibit "E."

Oct. 17, 1859, rec'd of Isaac Munson one hundred and twenty-five dollars.

($125.) JULIUS FOX.

Exhibit "F."

($125.) Received of Isaac Munson one hundred and twenty-five dollars, to apply as interest on a mortgage I hold against West
88 & Munson, of Dubuque, and which is the interest in full to this date.

ADAMS, *April* 15, 1860. JULIUS FOX.

The defendant also further read to the jury the deposition of George W. Bond, Solan D. Hungerford, John C. Cooper, and Philander Smith, taken in this cause, opened July 11, 1863, which are as follows, to wit:

And the said witnesses being of lawful age, and having each been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

George W. Bond, being duly sworn, says: I reside at Adams, N. Y. I am and have been cashier of Hungerford Bank, at Adams, since Sept. 1st, 1853.

Ques. Did you ever see, and if so, when and where, the five thousand dollar note made by West, Woodruff & Company, and held, or once held, by Julius Fox?

(Pl'ff objects to the question, and evidence to be given under it, on the ground that the note is not produced, and the question assumes facts not shown, and is otherwise incompetent and irrelevant.

89 Def't's counsel here producing proof of service of the notice hereto attached to produce the note, and pl'ff's counsel here declining to do so, saying it is not here, the witness answers: I saw a $5,000 note made by West, Woodruff & Company, [and claimed to be owned by Julius Fox,] at Hungerford's Bank, but cannot say when. (Pl'ff's counsel objects to the words included in brackets as incompetent.) I think I saw it there several times before it was due. I think I saw it on the day of its maturity; don't recollect that I saw it afterwards. (I think Julius Fox was there on the day of its maturity, and asked me if there were funds in the bank to meet it. I told him there was not. I think Fox then took it away with him or took charge of it and put it in the trunk which he kept in the bank.) (To this in parenthesis plaintiff's counsel objects as before, and as hearsay, &c.) I think the note had before then been kept by Fox in his trunk in the bank, and had never been formally in the bank's possession (Above objected to in time by pl'ff's counsel as above.) I have no recollection of that note ever having been hypothecated to me or

90 through me to anybody else; nor of its ever having been turned out as security for anything to any person.

[There was a mortgage on property Dubuque, Iowa, to secure the payment of the $5,000 note. That is my understanding, and that mortgage was transferred to me; I have no dates, but I should think between two and three years ago. The mortgage was in the hands of Levi H. Brown, an attorney; he made the papers. I did not see the mortgage. I instructed said Brown to do what he thought was best in collecting the claim in my name. I don't know whether the note in question was assigned to me with the mortgage or not. I know we talked only of foreclosing the mortgage. My impression is now that it was the mortgage only that was transferred to me. Julius Fox transferred the mortgage to me. I think I held it till a year ago last spring, and then re-transferred it to Julius Fox. I re-transferred it in writing. I think that Julius Fox brought to me, at Adams, the written transfer, in said Levi H. Brown's handwriting, and I signed

it at his request.] (The testimony in brackets was objected to in time by pl'ff's counsel as incompetent and irrelevant, and, as
91 above, that papers are not produced.)

Ques. Did you pay anything for the transfer of the mortgage to you, or agree to pay anything, and if not, what reason did you assign why he wished you take it? (Pl'ff objects as above.)

Ans. I did not pay anything. I did sign a paper agreeing to pay if I collected. Fox told me that his counsel, Mr. Brown, told him he thought he had better transfer it. (Like objection.) At the time of the re-transfer from me to Fox plaintiff lived in the State of Michigan; he had formerly lived at Adams, but moved away in 1854 or 1855.

Ques. State, if you can, how long it was, after you re-transferred to Fox, before he transferred to plaintiff? (Like objection as above.)

Ans. I do not know.

Ques. Did you ever hear Julius Fox, or any one else in his presence, state the rate of interest Fox was being paid or had agreed for on the $5,000 note? If so, when was it? What was the rate when payable, who said it, and if any person other than Fox, what did Fox say? (Obj. to by pl'ff's counsel for the reasons above, and generally as incompetent and irrelevant.)

92 Ans. I have heard him frequently spoken to in regard to his ten per cent. western investment. From the maturity of this note to the present time, or to within a few months, never heard any other rate than ten per cent. mentioned. Can't say as to the time when payable. Have heard S. D. Hungerford, R. P. White, and others, so speak to him, and have so spoken to him myself frequently. Don't know as Fox ever made any definite reply. It was generally spoken in a joking manner. He would say, "a pretty good rate of interest," or some such thing, and he never denied the rate was ten per cent. His replies were also in a joking manner.

G. W. BOND.

On cross-examination by pl'ff's counsel the above witness testified as follows:

Ques. Can you state any particular time when such conversation took place?

Ans. No.

Ques. Was it not always in a joking or taunting manner by the persons who made the remarks to him?

Ans. I think it was.

Ques. Can you state from recollection the date of the $5,000 note or the day of its maturity?

Ans. I cannot.

93 Ques. Can you state from recollection the date of the above-mentioned assignment of the mortgage to you, or of its assignment by you?

Ans. I cannot.

G. W. BOND.

Subscribed and sworn before me this 27th day of June, 1863.

L. H. AINSWORTH, *U. S. Com'r.*

Solon D. Hungerford, being duly sworn, testified as follows: I live at Adams; have been president of Hungerford's Bank, at Adams, about eighteen years; am acquainted with all the parties to this action, and with Julius Fox. I think I have an indistinct recollection of seeing the note in question at some time since its maturity; think I did not see it before it was due. Julius Fox kept a tin trunk in our bank with his papers in it. He once took it out and asked if that note was good; this may have been a year or two after it was due, perhaps two years. I think it was during the time when the interest was being paid on it after its maturity; the interest was being paid quarterly at ten per cent.; the payments per quarter were $125 each.

94 The assignment to Bond I heard of about the time of it; that time, I should think, was a year or more after they had ceased to pay the quarterly interest. (The above testimony was objected to in time by pl'ff's counsel as incompetent, hearsay, and the acts of other persons, and irrelevant.)

Ques. State what you know on the subject of the transfer from Julius Fox to Bond. (Ob.j to by pl'ff's counsel as irrelevant, incompetent, and as above, and the absence of papers.)

Ans. Julius Fox first proposed to me to take an assignment of the claim against West, Woodruff & Company, meaning, as I understood it, the note in question and collaterals for collection in my name. I declined doing so, and afterwards learned from Bond that he had taken an assignment of this claim from Fox; learned this from Bond within two or three weeks after I declined taking the assignment.

S. D. HUNGERFORD.

On cross-examination by pl'ff's counsel, the above witnes says:

95 Ques. Can you state from recollection the date of the note above mentioned, or of its maturity, or of either of the times, actions, or conversations above mentioned by you, in your direct examination?

Ans. No, sir; I cannot positively the dates of the other transactions, but can pretty well about the date of the note, as I had something to do in raising the money for the $5,000 note; it was in the fall of 1857, during the financial crisis of that year.

Ques. Have you been examined as a witness in this action on commission?

Ans. I have.

Ques. Did you state in that examination that you knew nothing of this transaction, or in substance to that effect?

Ans. No, sir.

Ques. Did you state, in substance, that you knew nothing about the subject-matter of the questions or issues in this action?

Ans. No, sir. They asked me direct questions, to many of which I answered that I did not know.

S. D. HUNGERFORD.

On re-direct examination by def't's counsel, the above witness says:

Ques. What are the things, referred to by you in your answer to the first question on cross-examination, that you had to do
96 about raising money for the note in question? (Obj. by pl'ff's counsel as irrelavant, incompetent, and as the observations about raising the money was not responsive to the question, and has no business there or here.)

Ans. Mr. Philander Smith, of the firm of Smith & Cooper, came to me and said Julius Fox had called upon them for a debt due from them to him, which they were not prepared to meet, and that they wanted a loan of three or four thousand dollars from me, as president of the bank, to enable them to pay Julius Fox, and I let them have it and remember the time, because it was pretty hard times, and few men, other than Smith & Cooper, could have got the loan from me at that time; they were among our best customers, and their paper was regarded as No. 1 paper. (Pl'ff's counsel objects to this evidence as incompetent and immaterial, and as the sayings and acts of other persons.)

Ques. On that paper of Smith & Cooper held by Fox, what rate of interest was Fox being paid? (Pl'ff's counsel objects as to last question.)

Ans. I did not know at the time; have been since informed
97 by Mr. Smith that they were paying ten per cent. to Fox. I mean that Smith said he was paying him a bonus; no agreement at the time as to the amount, only that he would make it right with him; it was to be a bonus any way, but Smith was to fix the amount, and he did make it up to ten per cent. (Obj. by pl'ff's counsel; same as above.)

S. D. HUNGERFORD.

Sworn and subscribed before me this 27th day of June, 1863.
L. H. AINSWORTH, *U. S. Com'r.*

John C. Cooper, being duly sworn, says:

I was of the firm of Smith & Cooper in 1857.

Ques. Did your firm owe Julius Fox, in 1857, in the fall, and if so, what debt, how much when contracted, on what terms, what rate of interest, and when, and how, and to whom was it paid?

(Obj. by pl'ff's counsel as incompetent and irrelevant and immaterial.)

Ans. Yes, sir; our firm did owe Julius Fox, in the fall of 1857, a cash loan of $5,000, contracted in July, I think, 1857. We loaned the money for 60 or 90 days; gave a note for it at seven
98 per cent. interest; that was all the terms that I was knowing to personally about it. We paid seven per cent. when the note was paid. What bonus was paid, if any, was paid by Smith, without my personal knowledge; the date of the payment of the note was October, 1857, and the first payment, I think, was made upon it the week before the suspension of the banks; the first payment was made by

ne to Gilbert Woodruff and Isaac Munson, defendants in this action; hey then held the note that we had given to Julius Fox.

Ques. How came Woodruff and Munson to have the note given by you and Smith to Julius Fox?

(Same obj. as to last question.)

Ans. I suppose that it was transferred by Fox to West, Woodruff & Company, as a cash loan, in exchange for which, he, Fox, received the $5,000 note in question here. I have been informed so by Julius Fox.

(This answer objected to by pl'ff's counsel as incompetent, irrelevant, and as hearsay.)

Ques. Had you, before the transfer of your note by Fox to def'ts, and if so, when offered to pay Fox money on it, and if so, what did Fox say or do?

99 (Same obj. by pl'ff's counsel as to last answer.

Ans. We had, I think, about the fore part of September; Fox said he had no use for the money, and preferred we should hold it. We had, several times previous to his transferring the note, talked to him about paying the note, and how he wanted it paid, and as late as two weeks before the transfer to defendants, we asked him to take two thousand dollars on it, and he declined, saying he had no use for the money, and thought he should prefer having us keep it till spring. The next I heard of it was the transfer of it to the defendants.

Ques. Did Julius Fox keep and hold the note in suit till after its maturity, and if so, up to about what time?

(Obj. by pl'ff's counsel as leading, calling for statements by Fox or others, or hearsay. Ques. waived.)

Ques. Up to about what time did Julius Fox hold the note in question?

(Obj. by pl'ff's counsel as incompetent, irrelevant, and calling for hearsay.)

Ans. I have never seen the note in question, to my knowledge; [but Julius Fox told me, in the spring of 1862, that he was go-

100 ing west to see if he could collect that debt against Munson; he has always called it the Munson debt, referring, as I understood it, to the loan to West, Woodruff & Co., of five thousand dollars.]

(Pl'ff's counsel objects to the testimony in brackets as incompetent.)

JOHN C. COOPER.

Subscribed and sworn before me this 27th day of June, 1863.

L. H. AINSWORTH, *Ass. Com'r.*

Adj'd to June 29th, 2 p. m.

June 29th, counsel for the parties present.

Philander Smith, being duly sworn, says:

I reside at Adams, Jefferson County, N. Y.; know Julius Fox and all the parties to this action, and I was, in the fall of 1857, one of the firm of Smith & Cooper; my partner was named John C. Cooper.

Ques. Was the firm of Smith & Cooper, in the fall of 1857, indebted to Julius Fox? If so, in what amount, when contracted, when due, for what consideration, what rate of interest, and when was it paid, and to whom?

(Obj. by pl'ff's counsel as incompetent, immaterial, and
101 particularly as to what rate of interest.)

Ans. Our firm was indebted to Julius Fox, in the fall of 1857, in the sum of five thousand dollars, contracted about the last of July, or first of August, 1857; can't say when due, but it was past due in October of that year, and, I think, in September; it was in a note given for cash lent us by Julius Fox, of five thousand dollars; the note was , on interest; no rate of interest specified in it; no particular bargain made for a bonus in terms, but I can state that was said. There was a remark made by Fox, while we were negotiating for the loan, to the effect that money was worth ten per cent., or that he could readily lend it for ten per cent., and I said to him, in reply, that I wanted the money. I said: Julius, we don't want to make any bargain about this, meaning the rate per cent, but we shall do what is right with you about it. I think the subject dropped then; he gave me encouragement that I should have the money. It was paid a part in October, and the rest in November, I think, and was paid to Woodruff and Munson, or their order.

102 Ques. How came your indebtedness to Julius Fox to be paid by you to Woodruff and Munson? If the money was drawn from your hands to lend to the defendants, state all the particulars of the manner of its withdrawal, with the negotiations, if any, before such withdrawal, between you and Fox, for payment to Fox, and if the money was lent to the defendant by Fox, state on what paper it was lent.

(Pl'ff's counsel objects as above, and also that it is hearsay and the acts of other parties.)

Ans. For the reason that they presented us with the note, claiming to own it. Sometime about the forepart of October I called upon Mr. Fox and said to him I had a part of the money, about $2,500, and I would like to pay on the note. He remarked he didn't care about it just then. I said to him we could not very well stand as minute men to him on so large an amount; it had then come on very hard times; that I wished to have some understanding as to the time of payment. He agreed to let it stand till after he got back from the west. He had been talking about going west before that,
103 and said it would be at least thirty days before he could go and return, and it was so left. The next we heard of the matter, within a week or ten days afterwards, the note was presented to us for payment by the defendants. After the presentation of the note, being somewhat irritated about it, I spoke to Julius Fox about it. Fox said his brother William made the negotiation. He said he did not intend to have had his brother do it so soon, or something like that. I have learned from Julius Fox soon after that he took a note from them for our note.

Ques. After the transfer of your note to the defendants, did you

pay the whole of the $5,000 note and interest, at 7 per cent., to the defendants or to their order? and if so, then state whether you accounted to Julius Fox for any additional interest, and if you did, when and what amount.

(Pl'ff's counsel makes like obj. as above.)

Ans. We did. We did account to Julius Fox for additional interest. It might have been thirty to fifty days after the presentation of the note for an additional three per cent.

104 Ques. How long did Julius Fox hold the note of the defendants referred to before he transferred it to the plaintiff?

(Pl'ff's counsel obj. as calling for hearsay, and as assuming a fact, and as leading, &c.)

Ans. I think he held it as late as the fall of 1860, and I think later. This I have learned from conversation with Julius Fox.

Ques. When you settled with Julius Fox how did it happen that the bonus allowed him over seven per cent. was just three per cent? Did either he or you claim or receive any other rate per cent.? and if so, what rate?

(Pl'ff's counsel obj. to above as incompetent, immaterial, and as acts and sayings of third persons.)

Ans. It was for the reason that I thought he would like to get about ten per cent. from what he said when I borrowed the money, and inasmuch as I accepted the money without objecting to the rate that he named that his money was worth, and said I would do what was right about it. I figured it up without one word being said about it at the time. No other rate per cent. named by either of us. He

105 did not say anything to the effect that he did not expect any additional percentage.

P. SMITH.

On cross-examination of the above witness by pl'ff's counsel, the witness testified as follows:

Ques. You state in your direct examination that Julius Fox said that his brother William made the negotiation. Will you relate all that he said about his brother William in reference to the matter?

Ans. At the time he said so he said his brother, no doubt, thought it would be all right; that his brother meant no harm; that he did not understand the arrangements that had been made between us. This he gave as an excuse for not giving us time as had been agreed between us. This is the substance of all I remember.

Ques. Did he say for what reason, or by what authority or right, his brother made a negotiation and transferred the note? If so, what did he say?

Ans. I think he said he was up here and his brother thought he could make a loan for him to these men, and he said he left the note with his brother, but he did not expect it would have been

106 made so soon.

Ques. Did he say where he, Julius Fox, was, when the negotiation was made with Woodruff & Munson?

Ans. I do not know as he stated particularly, but I inferred from

what he said that he was not here; he said his brother negotiated the loan, [but did not say he had nothing to do with it.]

(The words in brackets obj. to by pl'ff's counsel.)

Ques. Do you know where Julius Fox was at the time of the negotiation and loan?

Ans. I do not.

Ques. Was he at home or absent from home?

Ans. I could not say.

Ques. Did he go west?

Ans. No, sir.

Ques. Have you a mortgage on the property covered by and previous to that given by the defendants to secure this loan, and if so, for what amount? (Objected to by deft's counsel, as incompetent in form and substance. 2d. That it is too late to attack a witness on the ground of interest, after he has testified in full for the party calling him, and been examined by the adverse party as his own
107 witness.)

Ans. I have a mortgage of about $1,000, including interest.

Ques. Have you written a letter to Woodruff, stating that there was usury in the note in question, advising him to defend it, or in substance to that effect, and if so, when?

Ans. I wrote a letter to Mr. Woodruff, some year or year and a half ago, in which I spoke of this claim of his, and asked him some questions what he designed to do about it; think I mentioned what I was told by a party in Dubuque on the subject of usury, and who intended to defend it on that ground, but think I gave no advice whatever.

Ques. Who was that party?

Ans. The Messrs. Langwitty, if I remember the men.

Ques. Was your apprehension as to the goodness of your security, which induced you to write the letter?

Ans. Yes, sir.

Ques. Have you stated to Nathan Vickery, esq., of Adams, or George W. Bond, of same place, in substance, that you know nothing about this controversy, or the facts connected with it?

108 Ans. No, sir. I have stated to Mr. Vickery and Mr. Bond all the material facts that I have testified to here to-day on direct examination.

Ques. Can you state any time or place, when, as you say on your direct examination, that Julius Fox told you, or that you heard from him, that he held the note in question, year, month, or day, or either of them?

Ans. I don't know as I can state the time very accurately. I can state places and circumstances.

P. SMITH.

Sworn and subscribed before me this 29th day of June, 1863.

L. H. AINSWORTH, *U. S. Com'r.*

And rested his defence.

And thereupon, the said plaintiff's attorney read to the jury portions of the deposition of said defendant, Munson, filed Dec. ——, 1862,

for the purpose of contradicting said witness's testimony, above offered as follows, viz :

A part of his answer to the third direct interrogatory, which is as follows :

109 At the second interview, I drew a note of five thousand dollars, payable at Hungerford's Bank, Adams, bearing seven per cent. interest, dated Oct. 15, 1857, payable in one year from date to the order of Gilbert Woodruff and Isaac Munson. This note was signed by our firm, West, Woodruff & Co., endorsed by Gilbert Woodruff and Isaac Munson, and was then delivered to William Fox, and at the same time William Fox delivered to us a note for five thousand dollars, made by Smith & Cooper.

And also his answer to the second cross-interrogatory, which is as follows :

The negotiation and business of making the loan and giving the notes I have stated in my direct examination were conducted between William Fox, Woodruff, and myself. * * * The particulars of the transaction I have fully stated.

Upon the second occasion there were present William Fox, Woodruff, and myself, and I think Julius Fox; the second was in my back office.

And also his answer to the fifth cross-interrogatory, which is as follows :

I was acquainted with the late William Fox four or five years previous to his death, and I think in October, 1857, he had no
110 business, except he loaned some money, and had some buildings that he rented.

And the plaintiff's attorneys thereupon offered in evidence a letter of the said defendant, addressed to them concerning the judgment against defendant, of December 2, 1862, as aforesaid, in the following words and figures, viz :

ROCKFORD, ILL., *Jan'y* 14, '63.

HAINES & STOREY : Richard Dean, of Adams, New York, will buy Mann's judgment, note, and mortgage against me, at your offer of January 10, 1863. It will take 10 or 20 days to get it around. If this is satisfactory, let me know by return mail.

Yours, &c.,

G. WOODRUFF.

And thereupon, the defendant called Walter N. Woodruff, who, being duly sworn, testified as follows :

I know parties to suit, and know Julius Fox by reputation; I heard there was a judgment against my brother, and called upon Haines & Story, at his request, to see about it the 10th January, 1863. I met Mr. Story; he told me the judgment was final, and there was
111 no such thing as having any afterclap or rip up about it. I communicated what he told me to Gilbert Woodruff, the defendant, that day. I asked Story what would be the least amount he would take to settle the judgment, and he made this statement : I know

nothing about the judgment being conditional, and don't know that my brother knew it. Gilbert wrote me that he had heard judgment had been entered, and asked me to call and see them, Haines & Story, about it.

This is the statement furnished me by Haines & Story, (introduced,) and read as follows:

U. S. circuit court.

JOSIAH M. MANN
vs.
GILBERT WOODRUFF *et al.*

1862. Dec. 2.	Judg't in favor of pl'ff, damage.....	$6,445 65
	Costs.....	129 22
		6,574 87
	Deduct int. on $5,000, at 7 per cent., from Oct. 15, '57, to July 15, '58.....	612 50
		5,962 37
	Add int. 6 pr. ct. from 2d Dec. to 17th July, '63.....	44 71
	E. and O. E.	6,007 08

112 On payment of above sum we will assign the judgment, note, and mortgage to whomsoever def't may suggest, or satisfy judg't. Jan'y 10, 1863.

HAINES & STORY, *Pl'ff's Att'ys.*

On cross-examination witness said: I immediately communicated to my brother, the def't, what had been told me, and sent him this statement. I knew nothing of the judgment until I heard of it from my brother; he was not here in Chicago; can't say how soon I came in. (A paper is shown to witness.) This is my handwriting. I sent it from Milwaukie to pl'ff's attorneys; defendants authorized me to do so; it was after I sent him the statement of Jan'y 10, just referred to; it refers to this same judgment against my brother. He authorized me to agree to pay the sum mentioned in the statement referred to, to settle the judgment. I don't know whether the def't knew whether the judgment was final or not at the time he wrote me; I don't know whether it is or not.

The plaintiff then read to the jury the letter referred to by witness, which is as follows:

113 MILWAUKIE, *Jan.* 20, '63.

Messrs. HAINES & STORY, *Chicago:*

D'R SIRS: I have just received a letter from brother Gilbert, requesting me to call and settle the Fox claim; it will not be convenient for me to return to Chicago until Friday afternoon. I will be

at your office Saturday without fail, when I think that matters will be settled without doubt; so I pray you do not make any more costs before that time.

Yours, truly,

W. N. WOODRUFF.

Which is all the testimony offered by either party in the case.

And thereupon, the court left it to the jury to say, upon the whole evidence before them, what was the amount actually due from the defendant to the plaintiff, and in order to ascertain that they should allow all credits and payments made on the note which had been proved, and ascertain the amount as of Dec'r 2, 1862, [it not being claimed by defendants that there had been any payments or credits since.]

And thereupon, the counsel of the defendants asked the
114 court to give an instruction substantially to the effect as below, at the same time saying as the court understood something to the following purport, that he presumed the court would refuse it, but he wished to save the point; but the court declined to give the instruction on the ground; that the counsel could not in good faith, after what had taken place in open court, ask for such an instruction.

The instruction was as follows: If the facts were proved from the evidence submitted to the jury as stated in the pleas in this cause, numbered two, three, four, and five, or either of them, that they should find for the defendant.

The defendant, on the coming in of the verdict, filed his motion for a new trial as follows, to wit:

U. S. court.

MANN
vs.
WOODRUFF *et al.*

The defendant enters his motion for a new trial in this cause for the following reasons:

1st. The court refused to submit this cause upon the issues joined therein for trial by the jury.

115 2d. The court refused proper instructions to the jury as requested by d'f't.

3d. The instructions in fact given by the court to the jury were improper and erroneous under the issues herein, and contrary to law.

4th. Because the verdict of the jury was contrary to law, and the evidence in this cause.

W. T. BURGESS,
for D'f't.

Endorsed: Filed July 23, 1863.

WM. H. BRADLEY, *Cl'k.*

Which, after argument had, is denied by the court, to which defendant then and there excepted.

It is proper to add, in conclusion, that during the trial before the jury, and subsequently no exception was taken by defendant's counsel only as above stated.

In practice the court is not strict in requiring an exception to be expressly stated, if the point of law is distinctly made and presented.

116 The court, however, did understand the counsel in saying that he wished to save the point, as excepting to the opinion of the court in refusing the instruction, as he supposed would be and actually was the case.

THOMAS DRUMMOND. [SEAL.]

Endorsed: Filed July 22d, 1863.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the thirtieth day of July, A. D. 1863, came said defendant and filed his bond in said entitled cause, which said bond is in the words and figures following, to wit:

Know all men by these presents that W. Gilbert Woodruff, as principal, and Walter N. Woodruff and Erastus H. Whitney, as his sureties, are held and firmly bound unto Josiah M. Mann in the sum of seven thousand dollars, to be paid to the said Mann, his executors or administrators. To which payments, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each

117 of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this —— day of July, A. D. 1863.

Whereas the above-named Gilbert Woodruff hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in a certain suit lately pending in the circuit court of the United States, for the eighth circuit and northern district of Illinois, wherein said Josiah M. Mann was plaintiff, and said Gilbert Woodruff, Isaac Munson, and Robert West, defendants, in favor of said Mann, and against said Gilbert Woodruff, impleaded with said West and Munson, the said West and Munson not having been served with process, or appeared in said suit:

Now, therefore, the condition of this obligation is such, that if the above-named Gilbert Woodruff shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation to be void; otherwise the same shall remain in full force and virtue.

GILBERT WOODRUFF. [SEAL.]
WALTER N. WOODRUFF. [SEAL.]

In presence of—
WM. H. BRADLEY.

118 ERASTUS H. WHITNEY. [SEAL.]

{5 cent internal revenue stamp, cancelled.} Approved—

THOMAS DRUMMOND.

Endorsed: Filed July 30, 1863.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the fourth day of November, A. D. 1863, a writ of citation was filed in said clerk's office, whichsaid writ, with the endorsement thereon, is in the words and figures following, to wit:

United States of America to Josiah M. Mann, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the eighth circuit and northern district of Illinois, wherein Gilbert Woodruff, impleaded with Robert West and Isaac Munson, is plaintiff, and you are defendant in error, to show cause, if any there be, why the
119 judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Thomas Drummond, judge of the district court of the United States for the northern district of Illinois, at Chicago, in said district, this 30th day of July, A. D. 1863.

{Fifty cent internal revenue stamp, cancelled.} THOMAS DRUMMOND, [SEAL.]

UNITED STATES OF AMERICA,
Eastern District of Michigan, ss:

Charles Dickey, United States marshal of said district, being duly sworn, doth depose and say, that he did, on this twenty-ninth day of October, A. D. 1863, personally serve the within citation on the within named Josiah M. Mann, at Detroit, in said district, by delivering to him a true copy thereof, at the same time showing and reading
120 to him the original.

CHARLES DICKEY,
U. S. Marshal.
By CHA'S T. DICKEY,
Ass't U. S. M. for the Eastern District of Michigan.

Subscribed and sworn to before me this 30th day of October, 1863. Attest my hand and seal notarial.

{5 cent internal revenue stamp, cancelled.} GO. HANCOCK,
Notary Public, Wayne co., Michigan..

Endorsed: Filed Nov. 4th, 1863

WM. H. BRADLEY, *Clk.*

121 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a full, true, and perfect transcript of the record of the proceedings had in the cause wherein Josiah M. Mann was plaintiff, and Gilbert

Woodruff, imp'l'd, &c., was defendant, as the same appears from the records of said court, in said cause, and now remaining in my custody.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at office in Chicago, this 9th day of December, A. D. 1863, and of our independence the 88th year.

[SEAL.]

{5 cent internal revenue stamp, cancelled.}

WM. H. BRADLEY, *Cl'k.*

122 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the eighth circuit and northern district of Illinois, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said circuit court before you, between Josiah M. Mann, plaintiff, and Gilbert Woodruff, impleaded with Robert West, and Isaac Munson, defendant, a manifest error hath happened to the great damage of the said Woodruff, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, you are hereby commanded if judgment is therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Wash-
123 ington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 29th day of July, in the year of our Lord one thousand eight hundred and sixty-three, and the seal of the said circuit court being hereto affixed.

{Fifty cent. internal revenue stamp, cancelled.}

WILLIAM H. BRADLEY, *Cl'k.* [SEAL.

Filed December 12, 1863.